

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of:

HOWARD GOTBETTER

FAA Order No. 98-25

Served: December 23, 1998

Docket No. CP98EA0051

**ORDER DISMISSING
INTERLOCUTORY APPEAL¹**

On November 28, 1998, Respondent Howard Gotbetter filed a document entitled "Notice of Appeal." In a footnote, Gotbetter explained that he was filing an interlocutory appeal of right under 14 C.F.R. § 13.219(c). Under Section 13.219(c), a party may file an interlocutory appeal of right with the Administrator prior to the issuance of an initial decision by the administrative law judge in only a few circumstances, and none of those circumstances are present in this case. Hence, Gotbetter's so-called interlocutory appeal of right is dismissed, and the case is returned to the Office of Hearings.

It is provided in Section 13.219 that a party may file an interlocutory appeal of right to the Administrator prior to the issuance of an initial decision by the law judge only when one of the following conditions is present:

¹ The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 63 Fed. Reg. 57,729, 57,743 (October 28, 1998).

1. when the law judge barred a person from the proceedings;
2. when the law judge failed to dismiss the proceedings in accordance with § 13.215;²
3. when the law judge issues a ruling in violation of 14 C.F.R. § 13.205(b).³

14 C.F.R. § 13.219(c).

In this case, Complainant alleged in the complaint that Gotbetter violated 14 C.F.R. § 91.11(a), when he assaulted, threatened and intimidated a flight attendant and interfered with the performance of her duties aboard American Airlines Flight 58 on September 29, 1997.⁴ Gotbetter filed a document entitled "Response to Complaint by Howard Gotbetter, *Pro Se*, by Motion." Gotbetter's response consists of four motions⁵ as follows:

1. a motion to dismiss for insufficiency, claiming that Section 91.11 constitutes an "unconstitutional delegation of power and authority to members of a flight crew without any guidelines ..., is vague and impermissibly broad, and violative of due process"
2. a motion to dismiss the complaint, claiming that the allegations in the complaint are not supported by the evidence;
3. a motion for more definite statement, arguing that the complaint should be amended to include such specifics as: a) the time of day that the alleged

² Under 14 C.F.R. § 13.215, the law judge shall dismiss the proceedings with prejudice if before or during a hearing, the agency attorney withdraws the complaint or the respondent withdraws the request for a hearing and answer.

³ It is provided in 14 C.F.R. § 13.205(b), in pertinent part, as follows:

The administrative law judge shall not issue an order of contempt, award costs to any party or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right with the FAA decisionmaker

⁴ Complainant seeks a \$1,000 civil penalty for this alleged violation.

⁵ Gotbetter filed these motions instead of an answer under 14 C.F.R. § 13.218(f)(1)-(4).

assault, threats and intimidation occurred; b) the length of time of each event; c) the location on the airplane where each events occurred; etc.

4. a motion to strike various paragraphs of the complaint, arguing primarily that these paragraphs contained factual and legal conclusions without any supporting factual basis.

The law judge assigned to this matter, Burton S. Kolko, denied these motions and ordered Gotbetter to file his answer to the complaint by December 1, 1998. Hence, the law judge did not: 1) bar anyone from the proceedings; 2) fail to dismiss the proceedings after a withdrawal of the complaint or of the request for hearing and answer; or 3) impose any impermissible sanction. Thus, under 14 C.F.R. § 13.219(c), Gotbetter was not entitled to file an interlocutory appeal of right from this order by Judge Kolko.

THEREFORE, the motion for interlocutory appeal is dismissed, and this matter is remanded to the law judge. The law judge shall issue an order giving Gotbetter additional time in which to file an answer to the complaint.⁶



JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 22nd day of December 1998.

⁶ When preparing his answer, Gotbetter should meet the requirements of 14 C.F.R. § 13.209:

1. The answer must be in writing, and must be signed and dated.
2. The original and one copy of the answer shall be personally delivered or mailed to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW, Room 924A, Washington, DC, 20591.
3. A copy of the answer shall be served on the agency attorney who filed the complaint.
4. The person preparing the answer shall admit or deny *each numbered paragraph of the complaint*. If the person answering the complaint lacks sufficient information or knowledge to respond to any particular allegation, he may state that in the answer.